

Applicant respectfully traverses the Examiner's conclusions set out in that Communication for the following reasons.

Claims 3 and 15-18 are pending in this application, of which Claim 3 is the sole independent claim.

The Communication states that the submission (a Preliminary Amendment) filed with the RCE on October 18, 2004 is not fully responsive to the prior Office Action, because when Applicant amended Claim 3 on March 11, 2003, and further on October 18, 2004, the added claim recitations cause Claim 3 to read only on Fig. 5 and not on Fig. 3.<sup>1/</sup> The Examiner concluded that Applicant has impermissibly switched inventions from the species of Figs. 3 and 4 to the species of Fig. 5. In fact, Applicant has not switched.

First, Applicant submits that Claims 3-6, 11, and 13, as originally filed, and as they were at the time of the election requirement, did read on Fig. 5; Applicant simply erred in misidentifying the species on which Claims 3-6, 11, and 13 read. Since Applicant understands that the Examiner does not agree with Applicant on this point, Applicant will read Claim 3 on Fig. 5:

Claim 3 as originally filed recited a photoelectric conversion apparatus comprising photoelectric conversion elements (element 1 of Fig. 5) arranged on a plurality of rows; amplification means (formed by 2, 3, 7), including load means 7 arranged in units of vertical output lines 6, for amplifying signal charges accumulated in the

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<sup>1/</sup> An election-of-species requirement, mailed on September 30, 2002, required election of (1) the species of Figs. 3 and 4; (2) the species of Fig. 5; (3) the species of Fig. 6; (4) the species of Fig. 7; and (5) the species of Fig. 8. On October 30, 2002, Applicant filed a response electing the species of Figs. 3 and 4 and identifying Claims 3-6, 11, and 13 as claims which Applicant believed to read on that elected species.

photoelectric conversion elements 1 arranged in the plurality of rows; vertical scanning means 9 for sequentially scanning signals amplified by the amplification means to read the signals onto the vertical output lines 6; and horizontal scanning means 13 for sequentially scanning the signals amplified by the amplification means to read the signals onto horizontal output lines 11. The load means 7 are located on vertically the same side as a direction of outputting the signals from the amplification means, and some of the signals from the amplification means are output in an opposite direction to the direction of signal output (see, e.g., page 13, lines 14-20 of the specification filed).<sup>2/</sup> Therefore, Claim 3 as originally filed did clearly read on Fig. 5.

Claims 4-6, and 11-13 as filed also read on Fig. 5. Claim 4 as originally filed recited an apparatus according to Claim 3, wherein the signals from the amplification means (2, 3, 7) are output in opposite directions in units of columns or in units of a plurality of columns (see, e.g., page 13, lines 15-20 of the originally filed specification). Therefore, as shown, original Claim 4 clearly reads on Fig. 5.

Claim 5 as originally filed recited an apparatus according to Claim 3, wherein signals between adjacent photoelectric conversion pixels are averaged (see, e.g., page 17, lines 13-15, of the originally filed specification). Therefore, as shown, original Claim 5 clearly read on Fig. 5.

Claim 6 as originally filed recited an apparatus according to any one of

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<sup>2/</sup>It is of course to be understood that the references to various portions of the present application are by way of illustration and example only, and that the claims are not limited by the details shown in the portions referred to.

Claims 3 to 5, wherein the amplification means (2, 3, 7) is a MOS source follower circuit, and the load means 7 serving as a load of the source follower circuit is a constant current source (see, e.g., page 18, lines 6-7 of the originally filed specification). Therefore, as shown, original Claim 6 clearly read on Fig. 5.

Claim 11 as originally filed recited a photoelectric conversion apparatus comprising photoelectric conversion elements (reference numeral 1 of Fig. 5) mounted on a plurality of rows; output means 12 for outputting as voltage signals signal charges accumulated in the photoelectric conversion elements 1 mounted on the plurality of rows; vertical scanning means 9 for sequentially scanning the voltage signals from the output means to read the voltage signals onto vertical output lines 6; horizontal output means 13 for sequentially scanning the voltage signals on the vertical output lines 6 to read the voltage signals onto horizontal output lines 11; and shading correction means for correcting shading resulting from a voltage signal level difference between the photoelectric conversion elements on different rows, which is output from the output means (see, e.g., pages 16-17 of the originally filed specification). Therefore, as shown, original Claim 11 clearly read on Fig. 5.

Finally, Claim 13 as originally filed recited an apparatus according to claim 11, wherein the shading correction means includes signal level adjustment means for reversing, in units of arbitrary columns, a direction of a vertical signal level difference of signals between different rows output from the output means (see, e.g., page 9, lines 16-18). Therefore, as shown, original Claim 13 also clearly read on Fig. 5.

Thus, it is submitted that Claims 3-6, 11, and 13 as originally filed,

all clearly read on Fig. 5.

Importantly, Claim 3 as originally filed, and as it was at the time of the election requirement, did not read on Fig. 3 because that claim recited that “said load means are located on vertically the same side as a direction of outputting the signals from said amplification means, and some of the signals from said amplification means are output in an opposite direction to the direction of signal output”, which is not the case in Fig. 3. As is plain from Fig. 3, and as described for example at page 9, lines 7-10, of the specification in connection with Fig. 3, constant current sources 7 are located on the side vertically opposite to the direction of outputting signal voltages from a source follower circuit.

Therefore, while Applicant in his Response to Election of Species Requirement dated October 30, 2002, misidentified the species on which Claims 3-6, 11, and 13 read, those claims have always read on Fig. 5 and have never read on Figs. 3 and 4. Thus, there was never a switch from one species to another, and the claims should be further examined on their merits.

Moreover, even if assuming *arguendo* Applicant had switched inventions on March 11, 2003, it would be inequitable for the Office, now, to require him to file a divisional application to continue prosecuting these claims. March 11, 2003, was over two and a half years ago, and the claims have been examined since then and have *twice* been allowed. If there had been a switch on March 11, 2003, Applicant submits that that was the time for the Office to raise the issue. If Applicant were required now to file a divisional application to prosecute the pending claims, he would lose over two and a half years of

patent term and would not benefit from any patent term adjustment to the application (despite two Office delays of nearly one year each since then). This would be, at the least, very unfair to Applicant.

#### CONDITIONAL PETITION TO INVOKE SUPERVISORY AUTHORITY

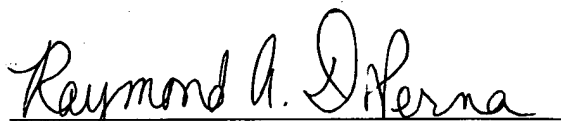
Should the Examiner refuse to examine Claims 3 and 15-18, this paper should be treated as a petition under 37 C.F.R. § 1.181 to invoke the supervisory authority of the Commissioner and should be forwarded with the file to the appropriate supervisory official for decision. It is believed that no fee is required for the petition, although any fee that may be required may be charged to Deposit Account 06-1205.

#### CONCLUSION

Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

A handwritten signature in dark ink, reading "Raymond A. DiPerna". The signature is written in a cursive style with a horizontal line underneath the name.

Raymond A. DiPerna  
Attorney for Applicant  
Registration No.: 44,063

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

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